
OPERATING AND TRACKAGE AGREEMENT

BETWEEN

THE DENVER AND RIO GRANDE RAILROAD COMPANY

PARTY OF THE FIRST PART

and

UTAH RAILWAY COMPANY

PARTY OF THE SECOND PART

Dated NOVEMBER 1ST 1913

OPERATING AND TRACKAGE AGREEMENT.

THIS AGREEMENT, made and entered into this first day of November, A. D. 1913, by and between THE DENVER AND RIO GRANDE RAILROAD COMPANY, a consolidated corporation organized and existing under and by virtue of the laws of the State of Colorado, and of the State of Utah, and hereinafter referred to as the "Denver Company," party of the first part, and the UTAH RAILWAY COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Utah, and hereinafter referred to as the "Utah Company," party of the second part,

WITNESSETH: THAT WHEREAS, the Denver Company is the owner and in possession, and engaged in the operation of a certain railroad and facilities extending from a point at or near the town of Price, in the County of Carbon and State of Utah, said point being designated as Mile Post No. 619 plus 528 feet of the Denver Company's mileage, to a point at or near the City of Provo, in the County of Utah and State of Utah, said point being designated as Mile Post No. 697 plus 170 feet of the Denver Company's mileage, including right of way, trackage, terminals, stations, watering and coaling facilities and other appliances and facilities, all as shown in red coloring on the attached map marked Exhibit A and made a part hereof, and hereinafter referred to as the Denver Company's Price-Provo line; and,

WHEREAS, the Utah Company is now engaged in the construction of, and when constructed will own and control, a single track railroad and facilities extending from a point of connection with a track of the Denver Company at or near the town of Castle Gate, in said County of Carbon and State of Utah, which said point is designated as Mile Post No. 628 plus 4547 feet of the Denver Company's mileage to a point at or near the town of Black Hawk in said last named County and State, which point is designated as Mile Post No. 22 plus 3759 feet of the Utah Company's mileage, including right of way, trackage, terminals, stations, watering and coaling facilities and other appliances and facilities, all as shown in

yellow coloring on the attached map marked Exhibit B and made a part hereof, and hereinafter referred to as the Utah Company's Castle Gate-Black Hawk line; and,

WHEREAS, the Utah Company is also now engaged in constructing or causing to be constructed and, when constructed, will own and control a single track railroad and facilities from a point of connection with the trackage of the Denver Company at or near the town of Thistle in the County of Utah in said State, which said point is designated as Mile Post No. 676 plus 3000 feet of the Denver Company's mileage to a point of connection with the trackage of the Denver Company at or near the city of Provo, in the County of Utah and State of Utah, which point is designated as Mile Post No. 696 plus 2050 feet of the Denver Company's mileage, including certain right of way outside of the right of way of the Denver Company, and trackage, terminals, stations, watering and coaling facilities and other facilities and appliances, which said last described railroad is, or will be, constructed in part upon and in part outside of the right of way of the Denver Company, all as shown in yellow coloring on the attached map marked Exhibit C and made a part hereof, and hereinafter referred to as the Utah Company's Thistle-Provo line; and,

WHEREAS, the Utah Company will acquire, by purchase, lease or construction, and when acquired, will own or control, during the period covered by this agreement, certain branch lines of single track railroad from said point or other points of connection at or near said Black Hawk to certain coal mines at or near said Black Hawk, and at Hiawatha and Mohrland, and possibly at other points, all in the Counties of Carbon and Emery and State of Utah, including right of way, trackage, terminals, stations, watering and coaling facilities and other appliances and facilities, all as shown on the attached map marked Exhibit B and made a part hereof, and hereinafter referred to as the Utah Company's branch lines; and,

WHEREAS, on to wit June 20th, 1913, the Denver Company entered into a written agreement with the Southern Utah Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Utah, and the Castle Valley Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Wyoming, for the operation by the Denver Company during

the period contemplated by said last mentioned agreement of certain branch lines of railroad extending from a point of connection with the trackage of the Denver Company at or near the town of Price in said County of Carbon and State of Utah, which said point is designated as Mile Post No. 619 plus 528 feet of the Denver Company's mileage, to said town of Black Hawk and a mine or mines in the vicinity thereof, and to certain mines at or in the vicinity of said Hiawatha and Mohrland, all as set forth in said last mentioned agreement, reference to which is hereby made for greater certainty; and,

WHEREAS, contemporaneously with the execution and delivery hereof, the Denver Company has also entered into a certain written agreement with the Utah Company for the acquisition in the name and interest of the Utah Company, of necessary right of way therefor outside the right of way of the Denver Company, and for the construction by, or under the supervision of, the Denver Company, of the Utah Company's said Thistle-Provo line, all as set forth in said last mentioned agreement, reference to which is hereby made for greater certainty; and

WHEREAS, the parties hereto desire to provide and arrange for the operation, by the Denver Company, of said railroad or railroads, branches, facilities and appliances of, or controlled by, the Utah Company, when acquired and completed as and in the manner and during the period or periods hereinafter provided for and, in the event of, and upon the termination of, the operation thereof by the Denver Company, in the manner hereinafter provided, also desire to arrange and provide for the joint operation as hereinafter provided, by the parties hereto, as a double track railroad, of all that part and portion of the Denver Company's said Price-Provo line shown in red coloring on said attached map marked Exhibit D, and also all of the Utah Company's said Thistle-Provo line shown in yellow coloring on said attached map marked Exhibit D, subject to such future arrangements or agreements as may be agreed upon by the parties hereto:

NOW, THEREFORE, for and in consideration of the covenants, promises and agreements hereinafter set forth, to be by the respective parties hereto kept, done and performed, and the payments to be made, as herein provided, and in

further consideration of the sum of one dollar, by each of the parties hereto to the other in hand paid, and other good and valuable considerations, the receipt of which is hereby mutually acknowledged, it is agreed by and between the parties hereto as follows, to wit:

ARTICLE I.

FIRST: The Denver Company agrees, contemporaneously with the construction and completion, by said Utah Company, of its said Castle Gate-Black Hawk line, and the turning over thereof to the Denver Company by the Utah Company for operation by the Denver Company, and contemporaneously with the completion by said Denver Company, or under its supervision for the Utah Company, of the Utah Company's said Thistle-Provo line, to assume full charge of and control over said respective railroads and their appurtenances, facilities and appliances of the Utah Company hereinabove in this section hereof referred to, and full charge and control of said Branch Lines of railroad and their appurtenances, facilities and appliances and any other line or lines constructed, or that may hereafter be constructed or acquired by the Utah Company, to mines in the vicinity of said Black Hawk, Hiawatha or Mohrland, and to operate the same in all respects as part and parcel of the railroad of the Denver Company, under tariffs joint with the Utah Company to and from all points on all of said railroads, branches and spurs, owned or controlled by the Utah Company, from and to all points to and from which the Denver Company shall at any time publish and file or concur in tariffs for the transportation of passengers and freight; which tariffs shall provide rates on coal shipments from said Black Hawk, Hiawatha and Mohrland and other points in the vicinity thereof not in excess of the rates on coal shipments contemporaneously in effect from other mines served by the Denver Company in said Counties of Carbon and Emery, west of said Price.

SECOND: The Denver Company further agrees, at its sole cost and expense to repair and maintain said railroads and facilities of the Utah Company in good and safe order and condition and to preserve, repair and maintain the equipment of the Utah Company furnished to the Denver Company hereunder, as and in the same manner in which the Denver

Company shall repair, maintain and preserve its own trackage, facilities and equipment, and at the expiration or other termination of the period of its operation of said railroad and facilities of the Utah Company, as herein provided for, to redeliver and restore the same and every part thereof to the Utah Company in as good condition as when received from the Utah Company, except ordinary wear and tear and damage by acts of God not reasonably to be foreseen; Provided, however, that in the event of such damage from unforeseen acts of God the parties shall agree as to what portion of the loss shall be borne by the Denver Company out of its earnings on said lines, and what portion shall be paid or reimbursed by the Utah Company; and in the event that the parties cannot agree, then the question shall be determined by arbitration in the manner provided in Section Fifteenth of Article V of this agreement, on a basis of spreading the loss over such time as to permit a reasonable payment of the same out of the earnings thereafter accruing, whether, and proportionately to the periods that, the lines shall be operated by the one party or the other.

THIRD: The Denver Company further agrees, within the period during which the Denver Company shall operate said railroads, appliances, facilities and equipment of the Utah Company, to protect, indemnify and save harmless the Utah Company from and against all and all manner of claims, demands, actions, causes of action, debts, dues and liabilities arising out of or predicated upon the operation thereof, including loss of or damage to property and injury to or the death of persons.

FOURTH: The Denver Company further agrees, to receive from the Utah Company, and to use for the transportation of traffic originating on the lines of the Utah Company, such cars, conforming to the Denver Company's standards, as shall be furnished to it by the Utah Company, and to pay to the Utah Company for the use of said cars, when on the lines of the Denver Company, or on the lines of railroad companies other than the Utah Company, standard per diem rates of compensation; and, on behalf, and in the interest, of the Utah Company to repair and maintain said equipment and to enforce, as to such equipment, all the rights of the Utah Company

as an owning railroad, in accordance with general rules and regulations governing per diem.

FIFTH: The Denver Company further agrees, after the completion of said railroads respectively, and their appurtenances, appliances and facilities by the Utah Company, or by the Denver Company on behalf of the Utah Company and the furnishing of said equipment by the Utah Company, and the assumption of the operation thereof by the Denver Company, to pay to the Utah Company, as hereinafter provided, during the full period during which the Denver Company shall operate the same, as aforesaid, as compensation for the use thereof, the following sums, to wit:

(a) Semi-annually and within thirty days after the same shall have accrued and upon the presentation by the Utah Company of bills therefor, interest at the rate of six per cent per annum upon the actual cost to the Utah Company (determined in accordance with the accounting rules of the Interstate Commerce Commission) of the construction of said railroads respectively; it being understood and agreed, however, that the amount on which the Denver Company shall pay interest, as aforesaid, on account of the construction and completion of the Utah Company's said Thistle-Provo line, shall be the sum of seven hundred and twenty-five thousand dollars which, for the purposes hereof, is accepted by the parties hereto as the actual cost of the construction thereof.

(b) Semi-annually and within thirty days after the same shall have accrued and upon the presentation by the Utah Company of bills therefor, interest at the rate of six per cent per annum upon all amounts actually expended by the Utah Company, subsequent to the completion of said railroad or railroads and facilities and the assumption of the operation thereof by the Denver Company, in or upon extensions thereof or additions thereto, subject, and actually subjected, to the terms and conditions hereof.

(c) Semi-annually and within thirty days after the same shall have accrued and upon the presentation by the Utah Company of bills therefor, sums equal to any and all rental or trackage charges payable and paid by the Utah Company to other persons, associations or corporations for the use of said Branch Lines and other lines to coal mines in the vicinity of Black Hawk, Mohrland and Hiawatha.

(d) Semi-annually and on the first day of July and the first day of January respectively, sums equal to all taxes lawfully assessed or levied, subsequent to the assumption by the Denver Company of the operation thereof, as herein provided for, and during the period of such operation, upon said railroad or railroads and facilities owned or controlled by the Utah Company and upon which the aforesaid rental or trackage charges are payable and paid by the Utah Company.

(e) Monthly and within thirty days after the same shall have accrued, subsequent to the assumption of the operation of said railroad or railroads and facilities by the Denver Company as herein provided, and during the full period during which the Denver Company shall operate the same as aforesaid, a sum equal to all per diem charges payable to the Utah Company hereunder after deducting therefrom all charges and expenses for the maintenance, repair and replacement of and taxes on said cars, and such additional amount, if any, required to make said sum equal to the amount of the depreciation at the rate of four per centum per annum on the original cost of said cars until such depreciation shall reach sixty per centum of the original purchase price of said cars, and interest at the rate of six per centum per annum upon the amount actually expended by the Utah Company as the purchase price of said cars; Provided, however, that said purchase price, upon which said six per centum per annum is to be computed, shall be reduced on account of depreciation at the rate of four per cent per annum upon said original purchase price until such depreciation shall equal sixty per cent of said original purchase price.

(f) Semi-annually and within thirty days after the same shall have accrued and upon the presentation by the Utah Company of bills therefor, sums equal to six per cent per annum on all amounts expended by the Utah Company at the option and request of the Denver Company for betterments, properly so denominated under the rules of the Interstate Commerce Commission; Provided, however, that the expense of no single betterment, as aforesaid, shall exceed the sum of five thousand (\$5000) dollars, and that the aggregate expense of all betterments, as aforesaid, constructed, erected or created during any calendar year shall not exceed the sum of twenty-five thousand (\$25,000) dollars, without the written

consent of the Utah Company; and, provided further, that the Utah Company shall have the right, at its sole cost and expense, to construct branches and sidings, terminal and yard tracks and other tracks and facilities to, and at, mines other than those now contiguous to the tracks of, or controlled by, the Utah Company and other industries in the territory served by, or tributary to, the railroads of the Utah Company, which said tracks and facilities shall, when completed, become and be subject in all respects to the provisions hereof, and the cost of construction of which shall be added to the amount on which the Denver Company shall pay interest, as aforesaid; and provided further, that the alignment and gradients of said branches and sidings, terminal and yard tracks and other tracks and facilities, are to receive the approval of the Denver Company and that the expenditure for any one of said branches, sidings, tracks and facilities shall not exceed forty thousand dollars without the written consent of the Denver Company.

SIXTH: The Denver Company agrees to keep such accounts and records in relation to all business and transactions conducted and carried on over the railroad of the Utah Company, as shall be necessary to enable the Utah Company to comply with all Federal and State requirements in relation to the making of reports of its operations and affairs by the Utah Company.

SEVENTH: The Denver Company agrees, to such reasonable extent as it lawfully may, not inconsistent with the rights of other carriers to furnish cars for said traffic, to use cars furnished by the Utah Company in accordance with the provisions hereof for the transportation of traffic originating on the lines of the Utah Company and moving under the joint tariffs provided for herein to points on or reached via the lines of the Denver Company.

ARTICLE II.

FIRST: The Utah Company agrees to acquire or cause to be acquired, necessary right of way for, and to construct and complete, or cause to be constructed and completed, the Utah Company's said Thistle-Provo line and also said Castle

Gate-Black Hawk line, and also to acquire by purchase, lease or otherwise, as it may see fit, said Branch Lines, and when completed and acquired, as aforesaid, to turn the same and their appurtenances, appliances and facilities over to the Denver Company for the operation thereof by the Denver Company as, and subject to the terms and conditions herein provided for.

SECOND: The Utah Company further agrees to join the Denver Company in the making, publishing and filing of, or to concur in, tariffs in relation to the transportation of freight and passengers from and to all points on the lines of the Utah Company now or hereafter constructed, to and from all points on or beyond the lines of the Denver Company; Provided, however, that the rates on coal shipments originating at any point on the lines of the Utah Company shall not exceed the rates contemporaneously in effect from points on the lines of the Denver Company in said Counties of Carbon and Emery west of said Price.

THIRD: The Utah Company further agrees to construct and complete, or cause to be constructed and completed, or, at the sole cost and expense of the Utah Company, to authorize and empower the Denver Company to construct and complete all betterments of and for said railroads of the Utah Company requested in writing by the Denver Company; Provided, that no single betterment, as aforesaid, and properly so denominated under the rules of the Interstate Commerce Commission, shall cost in excess of five thousand dollars, and that the cost, in the aggregate, of all such betterments, requested by the Denver Company in any calendar year, shall not exceed the sum of twenty-five thousand dollars.

FOURTH: The Utah Company further agrees to construct and complete, or cause to be constructed and completed, its contemplated trackage for its said Thistle-Provo line as nearly as practicable on the westerly one-half of the Denver Company's right of way and as nearly as practicable on the westerly one-half of the right of way acquired or to be acquired by the Utah Company, or by the Denver Company for and at the expense of the Utah Company, between said Mile Post No. 676 plus 3000 feet of the Denver Company's mileage at Thistle and Mile Post No. 696 plus 2050 feet of the Denver

Company's mileage at Provo; and also agrees, at any time hereafter, on the written request of the Denver Company, to convey to the Denver Company, its successors or assigns, free and clear of all and all manner of incumbrances and liens of any kind or character whatsoever, at the actual purchase price thereof to the Utah Company, all that part and portion of said Utah Company's right of way lying east of a line drawn parallel to and $7\frac{1}{2}$ feet easterly of the center line of the railway track of said Utah Company, which center line is shown upon the attached map marked Exhibit A and made part hereof, between point A on said map, designated as Mile Post 685 plus 2640 feet of the Denver Company's mileage and point B on said map, designated as Mile Post No. 691 plus 1765 feet of the Denver Company's mileage.

FIFTH: The Utah Company further agrees to grant and does hereby grant to the Denver Company the sole right and privilege of operating the railroads of the Utah Company and every part and parcel thereof, during the full term covered by Articles I and II hereof, and during such period, the right to collect and have, as its, the Denver Company's sole property, all rates, fares, charges, tolls, collections and other sums of money or other compensation whatsoever chargeable, demandable, collectible, or receivable in any manner whatsoever for the transportation of passengers and the transportation, storage, elevation or other handling of property over the railroads of the Utah Company or any part or parcel thereof.

SIXTH: The Utah Company further agrees, at its sole cost and expense, to purchase as and when required by the Denver Company so to do and to turn over to the Denver Company for use by it 500 new railroad cars, to wit, 300 coal cars and 200 box cars constructed of material and according to standards and specifications to be approved by the Denver Company, subject to the foregoing provision hereof with reference to payment for such use, and the maintenance, repair, replacement and depreciation thereof.

SEVENTH: The Utah Company further agrees to pay to the Denver Company, in accordance with the rules of the Master Car Builders' Association, and in the manner prescribed in sub-section (e) of Section fifth of Article I hereof, the cost of the maintenance, repair and replacement of said cars of the Utah Company.

EIGHTH: It is mutually agreed by and between the parties hereto that the foregoing provisions hereof shall be and remain in full force and effect for the full period of three years from and after the date of completion for operation of the Utah Company's said proposed Castle Gate-Black Hawk line; after the expiration of which said period either party hereto may terminate the arrangement hereinabove provided for, at the end of a calendar month, by giving to the other party not less than 12 months' notice in writing of a desire to so terminate such arrangement; Provided, however, that should the Denver Company fail or refuse to furnish reasonably adequate transportation for coal traffic originating on the Utah Company's railroad, the Utah Company shall have the right, upon 12 months' written notice, to terminate said arrangement within said period of three years; and upon the termination of said arrangement in any manner hereinabove provided, the Denver Company shall re-deliver and restore to the Utah Company peaceable possession of all and every part of the Utah Company's said railroads, facilities, appliances and equipment herein mentioned, in the condition set forth in paragraph Second of Article I hereof.

ARTICLE III.

FIRST: It is further agreed by and between the parties hereto that upon the termination of said operating arrangement provided for in Articles I and II hereof as aforesaid by act of either party or otherwise, and the surrender by the Denver Company to the Utah Company of peaceable possession to all and every part of the Utah Company's said railroads, facilities and appliances, and equipment, as hereinabove provided, each of the parties hereto shall thenceforth conduct and carry on its operations separately and apart from the operations of the other party hereto, except as hereinafter otherwise provided and subject to the following terms, conditions and limitations, to wit:

ARTICLE IV.

FIRST: The Denver Company agrees to grant and does hereby grant in perpetuity to the Utah Company, as part of said proposed joint double track arrangement, the joint use, with the Denver Company, of all that portion of the Denver

Company's tracks, stations, watering and coaling facilities and other facilities between said point at or near said Thistle, designated Mile Post No. 675 plus 4750 feet of the Denver Company's mileage, and said point at or near Provo, designated Mile Post No. 697 plus 170 feet of the Denver Company's mileage, shown in red coloring upon the attached map marked Exhibit C and hereinafter separately referred to as the Denver Company's Thistle-Provo line.

SECOND: The Denver Company further agrees to grant and does hereby grant to the Utah Company as part of said proposed joint double track arrangement, for the term of three years from and after the date on which such joint double track arrangement shall become operative and thereafter at the option of the Utah Company for successive five-year periods the joint use with the Denver Company of all that portion of the Denver Company's single and double track railroad, stations, watering and coaling facilities and other facilities between said point at or near said Castle Gate, designated Mile Post No. 628 plus 4547 feet of the Denver Company's mileage, and said point at or near said Thistle, hereinabove described, shown in red coloring upon the attached map marked Exhibit D and hereinafter referred to as the Denver Company's Castle Gate-Thistle line.

THIRD: The Denver Company further agrees, for the purpose of affording the Utah Company a connection between the Utah Company's said Thistle-Provo line and any extension thereof easterly of said Thistle, which the Utah Company may hereafter construct from a point outside the right of way of the Denver Company, to grant and does hereby grant in perpetuity to the Utah Company the joint use with the Denver Company of a track and cross-over from a point designated as Mile Post No. 676 plus 3000 feet of the Denver Company's mileage, said point being the easterly terminus of the Utah Company's said Thistle-Provo line, at or about the coal chute of the Denver Company at said Thistle; and thence on a curve to the left to said point outside the right of way of the Denver Company; which said connecting track is shown in yellow coloring on the attached map marked Exhibit C.

FOURTH: The Utah Company agrees to grant and does hereby grant in perpetuity to the Denver Company the joint

use with the Utah Company as part of said proposed joint double track arrangement, the Utah Company's said Thistle-Provo line.

FIFTH: It is mutually agreed that possession by the parties hereto under the grants provided for in Sections first, second, third and fourth of this Article IV hereof, and the payments to be made as in this article provided, shall be suspended until said joint double track arrangement provided for in Articles III, IV and V hereof shall become operative, and that such possession and payment by each party shall begin contemporaneously with the expiration or termination, whether by act of either party or otherwise, of said agreement contained in Articles I and II hereof.

SIXTH: It is further mutually agreed, for the purposes hereof and of determining the amount of the respective contributions of the parties hereto to said joint double track Castle Gate-Thistle line, and said joint double track Thistle-Provo line, and future payments to be made on account thereof, that the value of the Utah Company's said Thistle-Provo line is the sum of seven hundred twenty-five thousand (\$725,000) dollars, and the value of the Denver Company's said Thistle-Provo line is the sum of eight hundred fifty-four thousand sixty-seven (\$854,067) dollars, and that the value of said joint double track Thistle-Provo line and its appurtenances, appliances and facilities is the sum total of one million five hundred seventy-nine thousand sixty-seven (\$1,579,067) dollars, and that the value of the Denver Company's said Castle Gate-Thistle line is the sum of five million one hundred ninety-three thousand eight hundred seventy-five (\$5,193,875) dollars.

SEVENTH: It is further mutually agreed that at all times during the continuance of this agreement with reference to said proposed joint double track arrangement the maintenance, repair and renewal of all tracks, facilities and appliances constituting a part of said proposed joint double track arrangement, and the operation upon and over same by both the parties hereto, shall be under the supervision, management and control of the Denver Company, and that for the purpose of carrying out said arrangement and as consideration and compensation for the use, by the respective parties hereto, of said proposed joint double track, facilities and appliances, and the operation,

supervision and control thereof, payments shall be made by the respective parties hereto as follows, to wit:

EIGHTH: The Denver Company agrees to pay to the Utah Company the following amounts, to wit:

(a) Semi-annually and within thirty days after the same shall have accrued an amount equal to interest at the rate of six per cent per annum upon said sum of seven hundred twenty-five thousand dollars, the cost as aforesaid, to the Utah Company of the construction and completion of its said Thistle-Provo line.

(b) Semi-annually and within thirty days after the same shall have been paid by the Utah Company and upon the presentation by the Utah Company of bills therefor, a proportional part of the cost of insurance on, and taxes, rates, benefits, assessments and other governmental charges, State and Federal, of every kind and character imposed upon or accruing against, the Utah Company's said Thistle-Provo line which shall bear the same ratio to the total thereof that the car mileage of the Denver Company over said line shall bear to the total car mileage thereover.

NINTH: The Utah Company agrees to pay to the Denver Company the following amounts, to wit:

(a) Semi-annually and within thirty days after the same shall have been paid by the Denver Company and upon the presentation by the Denver Company of bills therefor, and during such period as the Denver Company's Castle Gate-Thistle line shall be used and occupied by the Utah Company as a part of said joint double track line, a proportional part of the cost of insurance on, and taxes, rates, benefits, assessments and other governmental charges, State and Federal, of every kind and character imposed upon or accruing against, the Denver Company's said Castle Gate-Provo line which shall bear the same ratio to the total thereof that the car mileage of the Utah Company over said line shall bear to the total car mileage thereover; Provided, however, that upon the termination of said joint double track line as to the Denver Company's said Castle Gate-Thistle line the payments in this section provided for shall be calculated on the Denver Company's said Thistle-Provo line.

(b) Semi-annually and within thirty days after the same shall have accrued and upon the presentation by the Denver Company of bills therefor, a proportional part of interest at the rate of six per cent per annum upon said sum of one million five hundred seventy-nine thousand sixty-seven dollars which shall bear the same ratio to the total amount of semi-annual interest on said sum at said rate that the car mileage of the Utah Company over said joint double track Thistle-Provo line shall bear to the total car mileage thereover.

(c) Semi-annually and within thirty days after the same shall have accrued and upon the presentation by the Denver Company of bills therefor, interest at the rate of three per cent per annum upon said sum of five million one hundred ninety-three thousand eight hundred seventy-five (\$5,193,875) dollars, for the period of three years from and after the date on which said joint double track arrangement shall become operative and thereafter during such additional five-year periods as at the option of the Utah Company said joint double track arrangement shall continue to be operative as to the Denver Company's said Castle Gate-Thistle line.

(d) Monthly and within thirty days after the performance of the service and the making of the disbursements involved, and the presentation by the Denver Company of bills therefor, a proportional part of the total expense of supervision, management and control of said joint double track Castle Gate-Provo line and the operation thereon and thereover and of the maintenance, reparation and renewal thereof which shall bear the same ratio to said total expense that the car mileage of the Utah Company over said line shall bear to the total car mileage thereover.

(e) Monthly and within thirty days subsequent to the expiration of each calendar month and upon presentation by the Denver Company of bills therefor a proportional part of the total expense of the Denver Company for telegraph and telephone service used and employed in connection with said joint double track Castle Gate-Provo line, which shall bear to the total expense thereof the same ratio that the car mileage of the Utah Company over said line shall bear to the total car mileage thereover.

(f) Monthly and within thirty days subsequent to the expiration of each calendar month and upon presentation by

the Denver Company of bills therefor, an amount equal to the cost, plus freight charges at regular tariff rates of all coal supplied to the Utah Company by the Denver Company plus the cost of delivery of such coal to the locomotives of the Utah Company.

(g) Monthly and within thirty days subsequent to the expiration of each calendar month and upon presentation by the Denver Company of bills therefor, an amount equal to the cost of all water supplied to locomotives of the Utah Company plus the cost of delivery of same to the locomotives of said Company.

TENTH: If the Denver Company shall electrify its said Castle Gate-Provo line, subject and devoted to the purposes of said proposed joint double track arrangement, or any portion thereof, the Utah Company shall have the option either to continue to operate by steam or to operate by electricity, and in the event that it shall at any time elect to operate by electricity the Utah Company shall pay to the Denver Company semi-annually after the commencement of such operation, and within thirty days after the presentation of bills therefor by the Denver Company, an amount equal to three per cent per annum upon the cost to the Denver Company of trolley, third rail or other electric conduit and substation construction and track bonding, and monthly the reasonable value of electrical power consumed by the Utah Company if such power shall be supplied by the Denver Company.

ARTICLE V.

FIRST: It is mutually agreed that each of the parties hereto shall, at its own sole cost and expense, construct, acquire or provide such betterments and additional facilities and improvements, which under the rules of the Interstate Commerce Commission are properly chargeable to capital account and which shall from time to time become necessary for the reasonable accommodation and convenient and expeditious handling of the freight and passenger traffic of both parties hereto, over the lines of each, subject and devoted to the purposes of said proposed joint double track arrangement; and the cost of said betterments, additions and improvements to the respective portions of said lines shall be added to the

amounts respectively hereinabove provided for, representing, for the purposes hereof, the capital investment of the respective parties hereto on which each respectively shall semi-annually pay interest or other charges, as hereinabove in Article IV hereof provided for.

SECOND: It is further mutually agreed that for the purpose of determining the car mileage of the parties hereto over tracks subject and devoted to the purposes of said proposed joint double track arrangement, each locomotive, whether running light or with load, other than Mallet locomotives, shall count as two cars, and each Mallet locomotive, whether running light or with load, shall count as three cars. Freight cars, passenger cars and motor cars, if any, whether loaded or empty, shall count as single cars. Hand cars, push cars, bicycle cars and other similar repair equipment and work trains, work equipment and business cars shall not be counted.

THIRD: It is further mutually agreed that each of the parties hereto shall keep an accurate record of all locomotives, cars and motor cars, if any, passing over said tracks, subject and devoted to the purposes of said proposed joint double track arrangement, and that the Denver Company shall keep an accurate record of all disbursements and expenses and services incident to the control, management and operation and the maintenance, repair and renewal of said tracks, appurtenances, appliances and facilities, as a basis for the payments herein provided for, and that the books, records and accounts of each of the parties hereto, with reference to such matters shall at all reasonable times be open to the inspection of the other party.

FOURTH: It is further mutually agreed that the control, management and operation of said tracks and facilities, subject and devoted to the purposes of said proposed joint double track arrangement shall be under the exclusive direction and control of the Denver Company, but all rules and regulations issued by the Denver Company shall be just and fair to each of the parties hereto, without preference for or discrimination against either of them; and that all officers and employes engaged in such control, management and operation shall attend to the business of both of the parties hereto impartially, and each party hereto shall cause its officers and employes to

comply with all rules and regulations issued in connection with such control, management and operation.

FIFTH: It is further mutually agreed that if, in the opinion of the Denver Company, the erection, maintenance and operation of interlocking plants, either at or near said Castle Gate at any time hereafter, or at said Thistle at any time after the Utah Company shall construct an independent line of railway easterly from said Thistle, or at said Provo at any time after the Utah Company shall construct a railway track into its independently owned terminal yard at Provo, or at all of said places at the times aforesaid, shall become necessary for the protection and safe operation of the parties hereto, the Denver Company shall have the right and is hereby authorized, at the sole expense of the Utah Company, to erect and thereafter maintain such interlocking plant or plants; the whole cost and expense of the erection and creation of which and of the subsequent maintenance and operation of which shall be paid by the Utah Company to the Denver Company promptly upon presentation by the Denver Company of bills therefor, and no part of which cost or expense shall be added to the amount on which interest or other payment shall be made to the Utah Company as in Article IV hereof provided.

SIXTH: It is further mutually agreed that if the Denver Company shall at any time hereafter exercise its option provided for in Section Fourth of Article II hereof and shall require the Utah Company to convey to the Denver Company a portion of the right of way of the Utah Company as in said last named section provided, and the Denver Company shall thereafter elect to widen the grade thereon and to construct an additional track thereon between said point designated Mile Post No. 685 plus 2640 feet of the Denver Company's mileage and said point designated Mile Post No. 691 plus 1765 feet of the Denver Company's mileage, the cost and expense of widening said grade and of constructing said additional track shall not be added to the amount on which interest or other payment shall be predicated as provided in Article IV hereof, but on the contrary the total cost and expense of such widening of said grade, including the actual cost to the Utah Company of constructing that portion of its grade which extends over onto the easterly portion of said

Utah Company's right of way so conveyed to the Denver Company between the two Mile Posts lastly designated as aforesaid on the easterly side of said longitudinal middle line parallel with the center line of the Utah Company's track and 7½ feet distant at right angles therefrom, and of the construction of said additional track shall be paid and borne by the Denver Company alone, but in other respects said additional track shall become a part of said joint double track and be subject to all the provisions of this contract relating to the joint double track arrangement; Provided, however, that upon the construction and completion thereon of said additional track or tracks by the Denver Company, it shall be optional with the Denver Company to withdraw from said proposed joint double track arrangement provided for herein its existing track between said designated points and to devote said present and existing track to its own sole uses and purposes or to make such other disposition thereof as it shall see fit.

SEVENTH: It is further mutually agreed that all persons engaged in the maintenance, repair, renewal, operation and protection of said tracks and facilities, subject and devoted to the purposes of said proposed joint double track arrangement, although paid by the Denver Company shall, as respects liability for loss, damage, injury or death, be deemed and considered the joint employes of the parties hereto.

EIGHTH: It is further mutually agreed that if any persons are or shall be engaged partly in such maintenance, repair, renewal, operation or protection and partly in service not connected therewith, then and in that case such persons shall be regarded as joint employes only to the extent of their engagement for the joint use and benefit of the parties hereto.

NINTH: It is further mutually agreed that enginemen and trainmen of each of the parties hereto, engaged solely in the service of one of the parties hereto, shall not be considered joint employes hereunder.

TENTH: It is further mutually agreed that each party hereto shall bear and pay for all loss, damage, injury or death by whomsoever the same may be sustained, which is caused solely by the negligence or willful act of its sole employe or employes.

ELEVENTH: It is further mutually agreed that each party hereto shall bear and pay for loss of or damage to its own property; property in its custody or control; property of its employes; property of its passengers and other persons on its trains; injury to or the death of its employes, its passengers and other persons on its trains; loss or damage not in this section specifically mentioned, sustained by itself, its employes, its passengers and other persons on its trains and owners of property in its custody, when such loss, damage, injury or death is caused by or results from:

(a) Any defect or imperfection in said tracks or facilities subject and devoted to the purposes of said proposed joint double track arrangement, or any part thereof.

(b) Unknown causes.

(c) The negligence or willful act of a joint employe or employes.

(d) Concurrent negligence or willful acts of a joint employe or employes and a sole employe or employes of either party hereto.

(e) Concurrent negligence or willful acts of the sole employes of both parties hereto.

(f) Negligence or willful acts when the responsibility therefor cannot be determined.

TWELFTH: All loss, damage, injury or death due to any of the causes classified in Section 11 of this article, the liability for which is not in this agreement otherwise provided for, shall be borne and paid for by the parties hereto on a car mileage basis as herein elsewhere defined, the intention of the parties hereto being that this section (12) shall cover all loss, damage, injury or death not mentioned and provided for in Section 11 of this article, due to any of the causes classified therein.

THIRTEENTH: It is further mutually agreed that in case of accidents where the liability of either party or both parties for loss, damage, injury or death, or the discipline of employes shall be involved, each party hereto shall have the right to a joint investigation.

FOURTEENTH: It is further mutually agreed and each of the parties hereto covenants and agrees to and with the other party that each of said parties shall and will forever

indemnify and save harmless the other from and against all claims, demands, actions, causes of action, debts, dues, liabilities, costs, judgments and attorneys' fees arising out of or predicated upon any loss, damage, injury or death, the risk of which is assumed by such indemnifying party; and each party agrees to pay, satisfy and discharge all costs, charges and expenses that may be incurred, and any judgments that may be rendered by reason thereof; and further agrees that in case of suit against either party hereto by third persons, for or on account of any claim or demand growing out of the operation of said tracks and facilities and other property covered by this agreement, where such claim or demand, if established, shall be chargeable under this agreement to the other party, such other party shall not be concluded by any such judgment against the party so sued unless it shall have had reasonable notice of the pendency of such suit and is requested to defend such suit or be bound thereby; but when such notice and opportunity shall have been given, the party so notified shall be concluded by any such judgment, as to all matters which could have been litigated in such suit

FIFTEENTH: It is further mutually agreed that if any dispute or difference shall arise between the parties hereto respecting the construction of any part or provision of this contract or the rights, duties and obligations of the respective parties hereunder, or the violation of any of the provisions hereof, or the refusal of either party hereto to perform any of its obligations hereunder, or as to any sum of money claimed to be due hereunder to one party from the other, any and all such matters, if they cannot be settled by the parties themselves, may and shall, on demand of either party hereto, be settled by arbitration, in the manner following, to wit:

The party demanding reference of any matter or thing hereunder to arbitration, shall give to the other party thirty days' written notice of such demand, stating specifically in such notice the question, matter or thing to be submitted for decision and naming a disinterested person experienced in railway operation, to act as one of such arbitrators. Within a period of thirty days after the receipt of such notice, the party receiving such notice shall designate a second arbitrator possessing like qualifications. If, at the expiration of such

thirty days' period from the receipt of such notice, the party receiving it has failed to notify the party demanding the reference, of its nomination of a second arbitrator possessing like qualifications, the party giving such notice may thereupon select such second arbitrator and shall thereupon give written notice to the other party of such selection, and the two arbitrators selected as aforesaid, shall thereupon select a third arbitrator possessing like qualifications and the board of arbitrators selected as aforesaid, shall designate a time, within thirty days, and place of hearing and shall notify the parties hereto in writing thereof. If the two arbitrators chosen in either of the manners aforesaid, shall be unable to agree upon a third arbitrator, such third arbitrator may be appointed, on ten days' written notice to the other party and upon the written request of either party, by a judge of the Supreme Court of the State of Utah. In case of the death, resignation or refusal to act of any arbitrator at any time before award made, the Board shall be reconstituted by the appointment of a successor in the same manner as such original appointee was selected. All hearings of the arbitrators thus selected shall be held at the time and place designated as aforesaid and from time to time thereafter as required by such board of arbitrators; and after such hearing and the presentation of such evidence and such arguments as may be submitted by the parties hereto, such board of arbitrators, or a majority of the members thereof, shall make its award in writing, which shall be promptly delivered to both of the parties hereto, and such award, when made and delivered as aforesaid, shall become and be binding and conclusive upon both of the parties hereto, and each of the parties hereto agrees to be conclusively bound thereby; and said award, when made, may be filed by either party hereto with the Clerk of the District Court of the County in which such hearing shall be had, as the basis of a judgment, and execution may issue from such court for the collection or other enforcement of such award; Provided, however, that each of the parties hereto shall have the right to assail such award for fraud or misconduct on the part of either party hereto or of said arbitrators, or any of them. All expense attending each and every arbitration hereunder shall be borne equally by the parties hereto.

The foregoing provisions hereof covered by Articles III, IV, and V shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns; Provided, however, that neither party hereto shall have the right to sell, assign, transfer, set over or convey to any other railroad company any interest in this agreement or any right, privilege or benefit arising under or by virtue of this agreement, without the written consent thereto of the other party hereto.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed the day and year first hereinabove written.

THE DENVER AND RIO GRANDE
RAILROAD COMPANY,

By.....*E. L. Brown*.....

Attest: Vice - President.

.....*J. B. Andrews*.....

Assistant-Secretary.

UTAH RAILWAY COMPANY,

By.....*W. M. Bradley*.....

Attest: President.

.....*R. B. Harkness*.....

Secretary.

Approved as to form

J. F. Vaile,

Gen. Counsel, D.&R.G.R.R.

Nov. 26, 1913.